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**IN THE
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF THE INVOLUNTARY)
TERMINATION OF THE PARENT-CHILD)
RELATIONSHIP OF J.B., MINOR CHILD)
AND HIS MOTHER LATISHA BASS,)
AND HIS ALLEGED FATHER SHEA HARVEY,)

LATISHA BASS,)

Appellant-Petitioner,)

vs.)

MARION COUNTY DEPARTMENT OF)
CHILD SERVICES,)

and)

CHILD ADVOCATES, INC.,)

Appellees-Respondents.)

No. 49A02-0511-JV-1055

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Charles J. Deiter, Judge
Cause No. 49D08-0308-JT-975

September 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

LaTisha Bass appeals the involuntary termination of her parent-child relationship with J.B., her minor child.¹ Bass raises the sole issue of whether clear and convincing evidence establishes a reasonable probability that either the conditions that resulted in J.B.'s removal from Bass's custody will not be remedied, or the continuation of the parent-child relationship between Bass and J.B. poses a threat to J.B.'s well-being. Concluding that evidence demonstrates a reasonable probability that the conditions resulting in J.B.'s removal will not be remedied, we affirm.

Facts and Procedural History

Bass gave birth to J.B. on November 16, 2001, when Bass was sixteen years old. The Marion County Department of Child Services ("MCDCS")² became involved upon J.B.'s birth because Bass and J.B. both tested positive for marijuana. Bass has admitted to using habitually and to smoking while pregnant with J.B. After J.B.'s birth, Bass entered into a program approved by the MCDCS under which Bass was to participate in a drug assessment, follow through with the assessment's recommendations, participate in Home-Based

¹ The trial court's decision also terminated the parent-child relationship between J.B. and Shea Harvey, J.B.'s alleged father. Harvey was not present at trial and has not joined this appeal.

² At the time of the proceeding below, the MCDCS was known as the Marion County Office of

Counseling (“Counseling”), and refrain from using any illegal substances.

In June 2002, the MCDACS filed a Child in Need of Services (“CHINS”) Petition in response to Bass’s failure to complete her drug counseling and screens. In July 2002, J.B. was removed from Bass’s custody and placed with Bass’s mother, in whose house Bass also lived. In November 2002, based on Bass’s failure to complete her drug treatment program, the Marion County Juvenile Court ordered that J.B. be removed from Bass’s mother’s home and placed in foster care. Bass was again referred to a substance abuse program, which she completed in February 2003. However, Bass then tested positive for cocaine in April 2003. Since this positive test, Bass has not failed a drug screen; however, she failed to show up for eight screens between March 1, 2005 and May 19, 2005.

In early 2003, the MCDACS referred Bass to Counseling. Bass participated regularly until the fall of 2003, when Bass became homeless due to her mother’s hospitalization and missed several meetings with her counselor, who closed Bass’s case unsuccessfully in October 2003. Bass began living with her mother again in January 2004, and the MCDACS again referred Bass to Counseling in May 2004. As part of this program, Bass signed an agreement in July 2004 under which she was to obtain and maintain employment, complete all drug screens, attend all visitations with J.B., maintain contact with her counselor and the MCDACS case manager, and maintain stable housing over the course of the following eight weeks. At this time, Bass was informed that she needed to demonstrate her ability to care for J.B. in the near future, or J.B. could be placed permanently with a family. During this eight-week period, Bass maintained contact with her counselor and case manager, lived with her

Family and Children. We refer to the organization throughout this opinion as the MCDACS.

mother, and regularly visited J.B., but failed to maintain employment or consistently attend drug screens.

Bass dropped out of high school after giving birth to J.B. and has not returned to school. She has enrolled several times in G.E.D. classes, but has not completed classes or obtained her G.E.D. Bass attended a three-week Certified Nursing Assistant (“CNA”) class in August 2004 and has indicated her intention to become a CNA. However, Bass has failed to take the necessary certification test. After Bass’s MCDCS case manager obtained payment for the classes, thus qualifying Bass to take the certification test, Bass overslept on the day of the test and arrived at the test site too late to take it. She has not attempted to take the test since this incident and remains without certification.

J.B. has been with the same foster family since December 2003. This foster family is willing and able to adopt J.B., who has formed an attachment to this family and considers his foster parents his mother and father. Bass has raised no argument that this family cannot meet J.B.’s physical and emotional needs. The MCDCS’s current plan is for this family to adopt J.B., and J.B.’s guardian ad litem has recommended that J.B. be placed with this foster family.

The trial court found that Bass’s failure to consistently take and pass drug screens, along with her failure to obtain and maintain employment, obtain her G.E.D., or complete her nursing certification indicate that Bass is not able to meet J.B.’s needs and that the continuation of her relationship with J.B. puts J.B. at risk. The trial court found the plan for J.B.’s adoption by the foster family to be satisfactory, and that termination was in J.B.’s best interests. Thus, the trial court ordered the termination of the parent-child relationship

between J.B. and Bass. Bass appeals.

Discussion and Decision

I. Standard of Review

When reviewing a termination of parental rights, we neither reweigh evidence nor judge witness credibility; instead we consider only the evidence most favorable to the judgment and the reasonable inferences that can be drawn from the evidence. In re J.W., 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. When a trial court enters findings of fact along with its judgment, we use a two-tiered review, first deciding if the evidence supports the findings and then deciding if the findings support the judgment. Id. We will set aside a finding or judgment only if it is clearly erroneous. Id. A finding is clearly erroneous when no facts or inferences support it. Id. We will reverse a judgment as clearly erroneous if we review the record and have “a firm conviction that a mistake has been made.” Id.

II. Termination of Bass’s Parental Rights

Although parental rights are afforded constitutional protections, the rights may be terminated when parents are unable or unwilling to meet their parental responsibilities. In re R.S., 774 N.E.2d 927, 930 (Ind. Ct. App. 2002), trans. denied. We do not terminate these rights to punish a parent, but to protect a child. Id. Therefore, courts must sometimes subordinate the parent’s interests to those of the child and terminate parental rights when the relationship threatens a child’s emotional or physical development. Id.

The elements that must be proved by clear and convincing evidence in order to terminate a parent-child relationship are set out in Indiana Code section 31-35-2-4(b)(2):

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

(B) there is a reasonable probability that:

- (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
- (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interest of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Bass does not argue that the requirements of subsections A, C,³ and D are not met, but argues that no clear and convincing evidence supports a finding that either subsection B(i) or B(ii) is met. Because subsection B is written in the disjunctive, we will affirm if clear and convincing evidence supports either condition. Castro v. State Office of Family and Children, 842 N.E.2d 367, 373 (Ind. Ct. App. 2006), trans. denied. Therefore, we do not discuss whether evidence supports the trial court's conclusion that the continuation of the relationship between J.B. and Bass poses a threat to J.B. because we find that clear and convincing evidence supports the trial court's conclusion that the conditions that resulted in J.B.'s removal will not be remedied.

The trial court found a reasonable probability that the conditions that resulted in J.B.'s removal will not be remedied based on Bass's "failure to further her education significantly and to obtain and maintain employment ... and by virtue of her continued lack of responsibility for following through consistently [with] ... drug screens and home-based counseling," a pattern that "outweighs the minimal progress she had made by ... providing

³ Bass argues that the termination of her rights may not be based solely on J.B.'s best interests, Appellant's Brief at 9-10, but does not argue that termination would not be in J.B.'s best interests.

babysitting as source of income and living in a stable residence with her mother.” Appellant’s Appendix at 19-20. Bass challenges several of the trial court’s findings used to support this conclusion, arguing that there was insufficient evidence to support the findings. We address each in turn.⁴

Bass challenges Findings 30 through 32, in which the trial court found that Bass had not consistently attended her scheduled drug screens, and that her failure to attend supported an inference of continued drug use. Bass argues that although she was not attending consistently for a time, she has passed all random drug screens since April 2003, and that no inference of drug use can be drawn from these facts. Although we acknowledge that Bass has passed all drug screens she has taken since she tested positive for cocaine on March 6, 2003, she failed to show up for eight drug screens between March 1, 2005 and May 19, 2005. Petitioner’s Exhibit 20. The Home-Based Counselor testified that, in her experience, when people miss screens, there is “an indication . . . that they may be hiding something.” Tr. at 218. When someone fails to show up for eight drug screens within a twelve-week period, it is reasonable to infer that the person is using drugs. The evidence supported the trial court’s findings relating to Bass’s continued drug use, and thus, these findings are not clearly erroneous.

Bass challenges Finding 36, in which the trial court found that Bass’s failure to

⁴ Bass argues that there was no evidence admitted to support Finding 11, in which the trial court found that Bass entered into a Participation Decree that ordered Bass to maintain contact with her Case Manager, secure and maintain employment and housing, participate in counseling, parenting classes, and a substance abuse assessment, and visit J.B. consistently. We do not decide whether or not this finding was clearly erroneous because the trial court’s judgment did not rely on Bass’s failure to adhere to the terms of this alleged decree. In any respect, the agreement Bass entered into on July 16, 2004 contains similar conditions, to which Bass also failed to adhere. Therefore, even if the evidence does not support

maintain employment, obtain her G.E.D., complete CNA certification, or “significantly further[] her educational or vocational skills . . . demonstrates a significant lack of initiative and motivation” Appellant’s Appendix at 16. Bass argues that this finding is erroneous because receiving her CNA training is a significant step. However, while Bass completed a three-week CNA training course in August 2004, as of June 2005 she had not taken the certification test, once missing a scheduled test in March 2005 because she did not wake up on time. Although the completion of the CNA course is a positive step, the evidence of Bass’s failure to take the certification test in the following ten months, obtain a G.E.D., or maintain consistent employment supports the trial court’s finding, and we cannot say that it is clearly erroneous.

Bass challenges Finding 37, in which the trial court finds that Bass has not demonstrated the ability to independently support herself and her child. Bass has indicated her intention to receive certification and work as a CNA; however, “the trial court is to assess the parent’s fitness to care for the children as of the time of the termination hearing.” In re B.D.J., 728 N.E.2d 195, 202 n.1 (Ind. Ct. App. 2000). Between July 2004 and March 2005 Bass maintained employment for only four weeks. Tr. at 230. At some point in March 2005, Bass began babysitting, earning \$178 every two weeks. Id. at 336. Although obtaining a babysitting job is a positive step, and Bass may have good intentions for the future, the evidence of Bass’s past pattern of conduct and her current situation supports the trial court’s finding, which is not clearly erroneous.

Bass challenges the relevancy of Finding 38, in which the trial court noted that two of

this finding, any error is harmless.

Bass's relatives had testified regarding their concern about the home environment in which Bass and her mother lived around the time of J.B.'s birth. Bass cites In re R.J., 829 N.E.2d 1032 (Ind. Ct. App. 2005) for the proposition that "[o]pinions of the home environment from the distant past are not relevant to a determination of whether the current environment is satisfactory." Appellant's Brief at 8. In In re R.J., we did not hold that evidence consisting of opinions about the parent's home environment in the past is not relevant, but found, in that case, that the evidence submitted provided an insufficient basis for the trial court's finding that the parent was unable to provide safe and adequate housing for his child. 829 N.E.2d at 1037. The testimony in In re R.J. dealt with the suitability of the location and physical aspects of an apartment that the parent acquired in hopes of obtaining custody of his child. Id. On the other hand, the testimony of Bass's relatives related to the environment of Bass's mother's house roughly three years prior to trial while J.B. was living there. Specifically, testimony indicated that the relative smelled marijuana in Bass's mother's home, that the home usually had no food in it, and that the environment did not encourage education. This evidence is relevant, though certainly not conclusive, to the current ability of Bass to provide a stable home for J.B. and to J.B.'s best interests.

In addition, although we conclude that the trial court's finding is not clearly erroneous and is relevant, we also note that the trial court's conclusion that Bass is unable to provide J.B. with the necessities of life rested on Bass's inability to maintain sufficient employment or demonstrate responsibility by fulfilling her drug screens, and not the past condition of her mother's home. Appellant's App. at 19-20. Therefore, even if Finding 38 is irrelevant to Bass's ability to provide suitable housing for J.B., an adequate basis to support the judgment

exists without this finding.

Bass challenges Finding 52, arguing that the evidence does not support the trial court's conclusion that Bass has failed to further her education, maintain employment, or consistently comply with drug screens and home based counseling. However, Bass has not furthered her education, except for the three-week CNA class, and has missed eight drug screens since March 1, 2005. While Bass has in some ways cooperated with her counselor, Bass failed to maintain contact with her counselor in the fall of 2003, leading her counselor to dismiss her case as unsuccessful. Bass admits that she has failed to consistently maintain employment. This evidence supported the trial court's conclusion, and thus, it was not clearly erroneous.

These findings, along with the other evidence introduced, support the trial court's conclusion that there is a reasonable probability that the circumstances leading to J.B.'s removal from Bass's custody will not be remedied. The judgment terminating Bass's parental rights was not clearly erroneous.

Conclusion

The trial court's judgment terminating Bass's parental rights was supported by the evidence and was not clearly erroneous. The judgment is therefore affirmed.

Affirmed.

SULLIVAN, J., and BARNES, J., concur.